



*Serving the Iowa Legislature*

# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

August 4, 2011

2011 Interim No. 1

## In This Edition

<b>Calendar .....</b>	<b>1</b>
<b>Agendas .....</b>	<b>2</b>
<b>Briefings .....</b>	<b>3</b>
• Administrative Rules Review Committee (7/12/11)	

## August 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## September 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Tuesday, August 16, 2011

### **Studies Committee of the Legislative Council**

11:30 a.m., Room 22, Statehouse

### **Service Committee of the Legislative Council**

11:50 a.m., Room 22, Statehouse

### **Legislative Council**

12:10 p.m., Room 22, Statehouse

Tuesday, August 16, and Wednesday, August 17, 2011

### **Administrative Rules Review Committee**

9:30 a.m. on Tuesday and 9:00 a.m. on Wednesday, Room 116, Statehouse

Wednesday, September 14, 2011

### **Fiscal Committee of the Legislative Council**

10:00 a.m., Room 116, Statehouse

*Iowa Legislative Interim Calendar and Briefing* is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

# AGENDAS

## INFORMATION REGARDING SCHEDULED MEETINGS

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### **Studies Committee of the Legislative Council**

Chairperson: Senator Amanda Ragan

Vice Chairperson: Representative Kraig Paulsen

Location: Room 22, Statehouse

Date & Time: Tuesday, August 16, 2011, at 11:30 a.m.

Legislative Services Agency Contact: John Pollak, Legal Services, (515) 281-3818.

Agenda: Make recommendations for legislative interim studies.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=49>

### **Service Committee of the Legislative Council**

Chairperson: Senator Michael Gronstal

Vice Chairperson: Representative Kraig Paulsen

Location: Room 22, Statehouse

Date & Time: Tuesday, August 16, 2011, at 11:50 a.m.

Legislative Services Agency Contacts: Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566.

Agenda: Consider and make recommendations concerning budget and personnel matters involving the Legislative Services Agency and the Office of the Citizens' Aide/Ombudsman.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=48>

### **Legislative Council**

Chairperson: Representative Kraig Paulsen

Vice Chairperson: Senator Michael Gronstal

Location: Room 22, Statehouse

Date & Time: Tuesday, August 16, 2011, at 12:10 p.m.

Legislative Services Agency Contacts: Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566.

Agenda: Consider reports from Legislative Council committees.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=43>

### **Administrative Rules Review Committee**

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Dates & Times: Tuesday, August 16, 2011, at 9:30 a.m., and Wednesday, August 17, 2011, 9:00 a.m.

Legislative Services Agency Contacts: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<http://www.legis.iowa.gov/Schedules/committee.aspx?CID=46>.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=53>

### **Fiscal Committee of the Legislative Council**

Co-Chairperson: Senator Robert Dvorsky

Co-Chairperson: Representative J. Scott Raecker

Location: Room 116, Statehouse

Date & Time: Wednesday, September 14, 2011, at 10:00 a.m.

Legislative Services Agency Contacts: Sue Lerdal, Fiscal Services, (515) 281-7794; Dave Reynolds, Fiscal Services, (515) 281-6934.

Agenda: Overview and updates concerning 2011 Session budget and Governor's item vetoes, monthly receipts, Fiscal Division Issue Reviews, monthly lottery report, and information technology.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=46>

### ADMINISTRATIVE RULES REVIEW COMMITTEE

July 12, 2011

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

#### **HUMAN SERVICES DEPARTMENT, *Medicaid Filings*, EMERGENCY ADOPTION.**

**Background.** Each year the Department of Human Services is authorized in statute to adopt a variety of changes to the Medicaid program on an “emergency” basis, with the proviso that the changes be reviewed by the Administrative Rules Review Committee before they are effective. The 2011 legislation, H.F. 649, §20 stated in part:

20. a. The department may implement cost containment strategies recommended by the governor, and may adopt emergency rules for such implementation.
- b. The department shall not implement the cost containment strategy to require a primary care referral for the provision of chiropractic services.

Due to the extended legislative session, the timeframe for the drafting and review of these Medicaid rules was significantly restricted; 14 rule filings were sent to the Committee on July 7, 2011, one week after adjournment. An August 1 effective date was intended, but was later postponed, with some filings effective August 17, and others September 1. These filings are summarized as follows:

1. Amendments to Chapter 75. Allow liens to recover Medicaid expenses for services involving malpractice.
2. Amendments to Chapter 78. Eliminate coverage for bariatric surgery.
3. Amendments to Chapter 78. Eliminate coverage for weight-loss drugs and limit coverage of drugs for symptomatic relief of cough and cold.
4. Amendments to Chapter 78. Restrict coverage of orthodontia for children.
5. Amendments to Chapter 78. Limit use of respite care under home and community-based services (HCBS) waivers to 48 hours per month.
6. Amendments to Chapter 78. Limit payment for durable equipment under an HCBS waiver to the amount paid for fee-for-service Medicaid.
7. Amendments to Chapter 79. Increase reimbursement rates for HCBS waiver services.
8. Amendments to Chapter 79. Increase pharmacy dispensing fees.
9. Amendments to Chapter 79. Increase reimbursement rates for psychiatric medical institutions for children (PMICs).
10. Amendments to Chapter 79. Eliminate graduate medical education payments for out-of-state hospitals.
11. Amendments to Chapter 79. Eliminate payment for treatment of a hospital-acquired condition.
12. Amendments to Chapter 79. Reduce physician payment for services provided in a facility setting.
13. Amendments to Chapter 79. Implement emergency room copayment and reduce Medicaid payment when service is nonemergency and patient is not referred by another provider.
14. Amendments to Chapter 80. Require new forms for paper billing of Medicare crossover claims.

The Director of the department, Chuck Palmer, initially spoke, providing a general overview concerning the development and background of all 14 filings. The director, along with other department representatives, noted that all of these proposals had been reviewed through the appropriations committees and authorized in H.F. 649 (see language set out above).

**Commentary.** “Respite care” is part of the AIDS/HIV, Brain Injury, Children’s Mental Health, Elderly, and Ill and Handicapped HCBS waivers. Respite care is necessary for families who provide constant care for family members with serious disabilities. It allows family members to receive periods of relief for vacations, holidays, and scheduled time off. Filing number 5 limits respite care to 48 hours per month. Hours not used within the month are lost. The Committee heard extensive testimony from service providers and parents who emphasized the need for continued service. Commenters noted that the only real alternative is care provided at the Woodward and Glenwood state resource center facilities, at a much higher cost to the state.

Department representatives, understanding the impact this filing would have, informed the Committee and the audience that filing number 5 would be rewritten to establish an annual limit of 576 hours a year, more than three weeks of around-the-clock care. Department representatives further agreed that the revised respite care rule would not be

# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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*(Administrative Rules Review Committee continued from Page 3)*

immediately adopted by the Council on Human Services on August 13, and that further discussion would take place. Committee members determined that the respite care issue would be again reviewed at the Committee's August 16 meeting, at approximately 1:00 p.m.

Additional public comments were received regarding filing number 2, which eliminates coverage for bariatric surgery. Industry representatives argued that the filing would not ultimately result in any savings, as those who receive the surgery require less medical care in the long term, savings which would be lost under this filing. It was stated that this surgery is only provided to persons who are morbidly obese, and that this surgery is a lifesaving measure. It was also asserted that the vast majority of states currently offer coverage for bariatric surgery. Alternative cost-saving measures were also proposed.

Public comments were also received on filing number 4, which restricts coverage of orthodontia for children. Industry representatives argued that the filing does not properly recognize the value of the orthodontia services offered, as these particular procedures are not merely cosmetic in nature, but an important form of preventive care. In the field of orthodontia, there is an index known as the Salzmann Index, by which a patient's level of need for such care is evaluated. Only those with a significant need would receive these procedures. Committee members asked if alternative methods are sought before resorting to this kind of procedure, and the representatives stated that was correct.

**Action.** Subsequent to the July meeting, the department postponed the final adoption of these rules, allowing for additional review at the Committee's August 16 meeting. Consequently, a special meeting was not required. No action was taken on filing numbers 1 and 6-14.

**HUMAN SERVICES DEPARTMENT, *Home and Community-based Services Waivers Under the Medicaid Program: Respite Care, 03/9/11 IAB, ARC 9403B, 70-DAY DELAY.***

**Background.** This filing had been delayed by the Committee at its April meeting, and was last reviewed in June. Although these rules and issues are impacted by the provisions of 2011 Iowa Acts, H.F. 649, they are not directly related. The rules provide that respite care cannot be utilized during the hours the primary caregiver is working, essentially the rules end payments for day camps attended by children with disabilities covered by a waiver.

**Commentary.** At the June Committee meeting, department representatives emphasized this rulemaking is merely a clarification of current federal requirements, and that local case managers had been improperly approving respite care requests for these day camps. The representatives stated that federal regulation provides that respite care cannot be used as an alternative to child care, and that if the caregiver is at work, then respite care is a form of child care, which cannot be reimbursed using Medicaid funds. Department representatives noted that a continuation of respite child care could only be accomplished with 100 percent state funding and would almost certainly lead to increased participation and cost.

This issue was reviewed by the General Assembly, and no action was taken in the 2011 Session. The Committee has sent a letter to Iowa's congressional delegation expressing the Committee's concern over this federal policy.

Committee members did work with local stakeholders in providing some additional services.

**Action.** No additional action taken; the 70-day delay expired June 11, 2011. Update—on August 2, 2011, Governor Branstad requested the department withdraw this rule filing and the department complied with the request.

**Next Meeting.** The next regular Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, August 16, and Wednesday, August 17, 2011, beginning at 9:30 a.m. Department of Human Services' rules will be reviewed at 1:00 p.m.

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*Internet Page:* <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53>